

Appl. No : **10/081,027**
Filed : **February 21, 2002**

REMARKS

With this Amendment, Claims 24-30 are pending in the present application and Claims 1-23 are canceled without prejudice. Applicants reserve the right to pursue the subject matter of the canceled claims in subsequent continuing applications.

Personal Interview

Applicant would like to thank the Examiner for being available for a personal interview with Applicant's representative on Thursday, December 16, 2004. During the interview, Applicant's representative demonstrated a model of Applicant's communication system, and presented arguments about the prior art of record. Applicant's representative argued that the Muckerheide patent teaches away from the claimed invention, because Muckerheide distinguishes the invention therein over communication systems employing a chart and a pointer wand. The Examiner argued that the Muckerheide patent teaches that his laser-writing system is an improvement over prior art systems using a chart and pointing wand, and thus, Muckerheide does not teach away.

Despite the Examiner's indication of agreement on this point, Applicant's representative *did not* agree that Muckerheide does not teach away. At best, Applicant's representative agreed to disagree with the Examiner on this point. Applicant maintains that Muckerheide does, in fact, teach away from the unique *combination* of a series of charts and a laser pointing system as previously recited in Applicant's Claim 1.

The Examiner suggested that the Applicant present method claims that recite the improvement in patient care allowed by the improved communication process recited in the invention. Although no agreement was reached as to patentability, Applicant has endeavored to provide method claims as suggested by the Examiner.

Anticipation under 35 U.S.C. § 102 and 103

Claims 1-23 were rejected under 35 U.S.C. § 102(b) and/or § 103(a) as being unpatentable over U.S. Patent No. 5,191,411 to Muckerheide and other references (including Official Notice). Applicants respectfully disagree with the rejections and with the Examiner's characterization of the cited references. Nonetheless, the above rejections are believed to be moot in view of the cancellation without prejudice of Claims 1-23.

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As discussed at the interview, Applicant believes that the Muckerheide reference teaches away from the system previously recited in Claim 1. Specifically, Muckerheide points out the “drawbacks” of systems employing a chart, specifically:

... an adjustable head pointer consisting of an aluminum wand which is removably attached to an individual's head through the use of head and chin straps such that an individual by moving one's head may point to objects and, for example, may sequentially point to letters of the alphabet printed upon a chart spelling out words towards communicating with other...

Unfortunately, however, many of such prior art communication devices have experienced drawbacks which restrict their use to individuals who possess considerable ability to move their head or limbs. Moreover the weight of such prior devices and the need for wide degrees of movement often preclude use of such prior art devices. In addition, the ability to form words and sentences to communicate may be cumbersome due to the need to point to each individual letter appearing on a chart with a wand or light pointer. (see col. 1, lines 26-48)

As a solution to the above-identified drawbacks, Muckerheide suggests his system, which allows a user to “write” words or “draw” images on a screen using a laser pointer. Nowhere does Muckerheide suggest combining this “improved” system with the chart/wand system described in the background section.

New Claims

Applicant respectfully submits that the methods recited in new Claims 24-30 are not anticipated or rendered obvious by the prior art of record. Specifically, the prior art of record, taken individually or in combination, does not teach or suggest the unique combination of steps recited in Claims 24-30. Applicant therefore respectfully requests allowance of Claims 24-30.

CONCLUSION

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although some claims have been canceled, no acquiescence or estoppel is or should be implied thereby. Rather, the cancellations are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of all of the features or acts recited in a claim which distinguishes it over the

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prior art. Additionally, any argument made in support of patentability of a single claim is intended to refer only to the claim which is addressed in the argument, and should not be read as influencing the interpretation of any other claims or claim limitations.

In view of the foregoing, Applicant submits that the claims of the present application are in condition for allowance, and Applicant respectfully requests that the present application be passed to allowance at the earliest possible date. The undersigned has made a good faith effort to respond to all of the rejections and objections in the present application and to place the claims into condition for allowance. Nevertheless, if any issues remain which can be resolved by telephone, the Examiner is respectfully requested to call Applicant's representative at the number indicated below in order to resolve such issues promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR,
LLP

Dated: 12/20/04

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